

INITIAL STATEMENT OF REASONS

TITLE 13, DIVISION 1, CHAPTER 1

Surety Bond Forms and Bond Conditions

The general law governing bonds permitted or required to be given as a condition of issuance of an original or renewal of a license or permit is the Bond and Undertaking Law, Chapter 2 (commencing with section 995.010) of Division 14 of Part 2 of the Code of Civil Procedure (CCP). Also significant is the Surety Law, Title 13 (commencing with section 2787) of Part 4 of Division 3 of the Civil Code. To the extent the Vehicle Code relating to bonds provide provisions which are different or inconsistent with the Bond and Undertaking Law, the Vehicle Code provisions govern (CCP 995.202(a)).

Division 5 of the Vehicle Code requires bonds for Driving School Owners, All-Terrain Vehicle Safety Training Organization Principals [11102(a)(3)], Traffic Violator School Owners [11202(a)(3)], Vehicle Verifiers (11301), Registration Services [11401(e)], Lessor-Retailers [11612(a)], and Dealers and Remanufacturers (11710). The provisions of the Vehicle Code relating to occupational license bonds required or permitted under division 5 are similar but not identical across the eight types of licenses for which bonds are required, and for dealers vary according to the types and numbers of vehicles dealt in and whether or not the dealer sells at retail.

The bonds required as a condition of issuance of original or renewal occupational licenses under Division 5 of the Vehicle Code are statutory bonds. Their amounts, conditions and certain other related provisions are provided by statute and the effect of the statutes cannot be altered by regulations inconsistent with the statute.

If a bond does not contain the substantial matter or conditions required by the Bond and Undertaking Law or by the statute providing for the bond, or if there are any defects in the giving or filing of the bond, the bond is not void so as to release the principal and sureties from liability. The beneficiary may, in proceedings to enforce the liability on the bond, suggest the defect in the bond, or its giving or filing, and enforce the liability against the principal and the persons who intended to become and were included as sureties on the bond. (See CCP 995.340).

The form of all bonds of licensees, permittees, and all persons other than public officers and employees, furnishing bonds to a State department, office, board, commission or bureau in pursuance of State law shall be on a form which has been approved as to conformity with applicable law by the Attorney General. (See Chapter 1 (commencing with section 11110) Part 1 of Division 3 of Title 2 of the Government Code.) The Attorney General has adopted a regulation providing a model statutory bond form (Title 11, CCR 25).

The department has reviewed and standardized its surety bond forms to conform to the Attorney General's sample bond language, and is proposing to adopt regulations to specify the bonds and identify conditions for bonds not specified in statute.

Surety bond forms

In some instances, a surety bond form is necessary to document that a statutorily mandated surety bond was properly issued by an admitted surety insurer for a motor vehicle or vessel without ownership documents prior to the issuance of a California title. The surety bond identifies the person or entity assuming the financial obligation mandated under the Vehicle Code. In other instances, a surety bond provides consumers and the department a means to resolve disputes with occupational licenses. The surety bond identifies the person or entity assuming the financial obligation for the period in which an occupational license is valid. All of the department's surety bonds have the following features in common.

The National Association of Insurance Commissioners (NAIC) number is required to identify the company and subsidiary. Many insurance and surety companies and their subsidiaries have similar names. The NAIC number is unique to each company. The department receives updated lists of insurance companies authorized to sell surety bonds in California and the NAIC number identifies each company. The bond number is the identifier used by a surety company to track bonds issued by the surety.

The true, full name of the person responsible for obtaining the bond, and the address where legal documents may be served on that person, are required. The name and business address where legal documents may be served on the surety company along with the state or country where the surety company has filed incorporation documents are required to identify the surety assuming the bond risk. This information is necessary to adequately identify who is asking for the bond, the surety issuing the bond, and under what authority the bond is being issued.

All bond forms for occupational licenses must contain the date the bond becomes effective. This is necessary to inform all parties of the date the conditions of the bond are in effect.

Every bond form contains the standard departmental certification, which requires the city, county, and state where the certification is signed, along with the date. The certification is signed under the penalty of perjury under the laws of the State of California that the information given is true and correct. The signer is therefore acknowledging the consequences of making false statements and understands the importance of furnishing correct information. The written signature and the printed name of the authorized attorney-in-fact are also required. This information is necessary to authenticate the certification and identify the person signing for surety should the bond be activated. The signature of the person signing the bond and the date that it is signed are necessary to establish a legal basis for holding the surety accountable for the monetary obligation provided on the form.

Instructions on the back of each form explain what information the surety is required to provide. The surety bond forms have been sent to the Attorney General's office for approval and after approval will be sent to the Office of Administrative Law for publication in Title 11, California Code of Regulations. The official notification of approval will be incorporated in the rulemaking file.

§152.00. Motor Vehicle Bond Requirements.

From the time the Department of Motor Vehicles (the department) started to issue titles of ownership, circumstances have occurred where the motor vehicle title is unavailable and ownership has been in doubt. In 1963, the Legislature provided the department with a remedy by enacting a statute to allow a motor vehicle owner or applicant for a California title to provide a surety bond in place of ownership documents. A surety bond form was developed at that time, but it was never reviewed nor has it been amended since its creation. Regulations were never developed to identify the department-approved method used to calculate the fair market value of a motor vehicle that the department requires for the penal sum identified in the surety bond.

The surety bond is required of a motor vehicle owner applying for a California title when the motor vehicle owner cannot meet the department's titling requirements. The surety company assumes the financial risk for future owners should the titling documents issued by the department be invalid because the titling documents were based on erroneous information provided by the applicant. The surety bond form is completed by the surety company and returned to the department. The surety bond form is incorporated by reference in the proposed regulation. The motor vehicle surety bonds (the Foreign Vehicle Ownership surety bond (no number and revision date) and the Motor Vehicle surety bond (no number and revision date)) previously used and required by the department were never assigned form numbers and revision dates. These bonds have been combined into a single form as the information remains the same and the authority sections are referenced on the form. The combined surety bond is entitled Motor Vehicle Ownership Surety Bond (REG 5057, NEW 12/2004).

Because motor vehicles vary in monetary value, the surety company must enter a monetary amount (the penal sum) for the value of the bond. The department will accept a written appraisal provided by a California licensed or other state licensed motor vehicle dealer or motor vehicle insurance representative as people who work in those positions are considered experts, are aware of the fair market value of many varieties of motor vehicles and will provide an accurate and honest appraisal. The other method that the department allows when determining the fair market value of a motor vehicle involves a valuation and pricing handbook. Using the handbook's high and low scale for a particular motor vehicle and the mathematical calculation indicated in the regulatory language (see subdivision (b)) provides the average monetary value that the department has determined to equal the fair market value. Either of these methods provides a moderate level of assurance that the monetary value of the motor vehicle is adequately covered by the bond.

The middle portion of the bond requires the descriptive information identifying the motor vehicle. This information includes the California license plate number, if assigned; the vehicle identification number (VIN), the make of the motor vehicle and the year model. The California license plate number and VIN are unique to the each motor vehicle and, combined with the make and year model of the motor vehicle, provide a quick and easy method of identifying the motor vehicle. The descriptive information is necessary to match the surety bond to an actual motor vehicle.

Subdivision (a) is proposed to inform the general public of the titling option should the documents not be available; the referenced Vehicle Code section that authorizes the bond; and the name, number, and revision date of the appropriate surety bond required when the titling documents are unavailable or in doubt.

Subdivision (b) is proposed to clarify how a bond's monetary value (the penal sum) is determined as statute does not indicate a monetary value or a method to calculate the monetary value that would adequately cover the loss of or damage to the motor vehicle.

Subdivisions (b)(1), (b)(1)(A) and (b)(1)(B) have been added to inform applicants and sureties of the methods that the department has determined may be used to calculate the fair market value. This is necessary so that all applicants use the same methods to determine a fair market value.

Subdivision (c) is proposed to clarify for motor vehicle owners or applicants for a California certificate of title without the department's required supporting evidence of ownership, what is the acceptable alternative to the surety bond as provided by California statute.

§190.03. Vessel Bond Requirements.

A surety bond is required of a vessel owner applying for a California title when the vessel owner cannot meet the department's titling requirements. The surety company assumes the financial risk for future owners should the titling documents issued by the department be invalid based on erroneous information provided by the applicant. The surety bond form is completed by the surety company and returned to the department. The surety bond form is incorporated by reference. The vessel bond form that was developed in the 1970's was not assigned a form number nor a revision date. The title of the surety bond form remains the same. The vessel surety bond form is titled the Undocumented Vessel Surety Bond (REG 5058, NEW 12/2004).

Because vessels vary in monetary value, the surety company must enter a monetary amount (the penal sum) for the value of the bond. To ensure a reasonable monetary recovery for future purchasers, the department's policy is to allow a written appraisal provided by a California licensed or other state licensed yacht and shipbroker as they are considered experts on the sale of vessels and are aware of the fair market value of many varieties of vessels. The other method that the department allows when determining the fair market value of a vessel involves a

valuation and pricing handbook. Using the handbook's high and low scale for a particular vessel and the mathematical calculation indicated in the language (Subdivision(b)) provides the average monetary value that the department has determined to equal the fair market value. Either of these methods provides a moderate level of assurance that the monetary value of the vessel is adequately covered by the bond.

The middle portion of the bond form requires descriptive information that identifies the vessel. This information includes the CF number, if assigned; the hull identification number (HIN); the make of the vessel; and the year model. The CF number and HIN are unique to each vessel and, combined with the make and year model of the vessel, provide a quick and easy method of identifying the vessel. The descriptive information is necessary to match the surety bond to an actual vessel.

Subdivision (a) is proposed to inform the general public of the titling option should the ownership documents not be available; identify the referenced Vehicle Code section that authorizes the bond; and identify the name, number and revision date of the appropriate surety bond form required when the titling documents are unavailable or in doubt

Subdivision (b) is proposed to clarify how a bond's monetary value (the penal sum) is determined as statute does not indicate a monetary value or a method to calculate the monetary value that would adequately cover loss of or damage to the vessel.

Subdivisions (b)(1), (b)(1)(A) and (b)(1)(B) are proposed to inform applicants and sureties of the method that the department has determined may be used to calculate the fair market value. This is necessary so that all applicants use the same methods to determine a fair market value.

Subdivision (c) is proposed to clarify for vessel owners/applicants applying for a California certificate of title without the department's required supporting evidence of ownership, what is the acceptable alternative to the surety bond as provided by California statute.

§268.02. Dealer Surety Bond Requirements.

Section 268.02 is proposed in Article 4.2, Title 13, California Code of Regulations to identify the dealer surety bond form by name, number and revision date and clarify the bond conditions. In addition, the form required for the appointment of the director as an agent of service of process that is required in Vehicle Code section 11710(d) is identified.

Subdivision (a) identifies the Dealer Surety Bond, form OL 25 (Rev. 11/2004), which is required for dealers who must provide the \$50,000 bond under Vehicle Code section 11710(b). The form is incorporated by reference. This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code section 11710(a). The surety bond identifies the person or entity assuming the financial obligation for the period in which an occupational license is

valid. The middle portion of the surety bond form requires the date the bond becomes effective. This is necessary to inform all parties of the date the conditions of the bond are in effect.

Subdivision (b) identifies the bond required by Vehicle Code section 11710 from dealers who deal exclusively with motorcycles and/or all-terrain vehicles.

Subdivision (c) identifies the bond required by Vehicle Code section 11710.1 from dealers who sell wholesale-only less than 25 vehicles per year.

Subdivision (d) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond.

Subdivision (e) identifies the statutorily mandated supporting document that appoints the director as the agent for service of process by the principal. Vehicle Code section 11710(d) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the service of process can be served upon the department's director. The form entitled Appointment of Director as Agent for Service of Process, ADM9050 (NEW 12/2004) is required for all bonds that require the service of process attachment.

§274.00. Surety Bond Requirements For Motorcycle Dealers, Motorcycle Lessor-Retailers, All-Terrain Vehicle Dealers, or Wholesale-Only Dealers (Less than 25 Vehicles Per Year).

Section 274.00 identifies the Surety Bond of Motorcycle Dealer, Motorcycle Lessor-Retailer, All-Terrain Vehicle Dealer, or Wholesale-only Dealer (Less than 25 Vehicles Per Year), OL 25B (Rev. 11/2004), which is incorporated by reference in subdivision (a). This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code sections 11612, 11710 and 11710.1.

Subdivision (b) defines the time period for determining when a dealer sells less than 25 vehicles per year. The time period from the date of initial licensure and ending on the day before the renewal date is the most logical and would be understood by all parties.

Subdivision (c) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond.

Subdivision (d) identifies the statutorily mandated supporting document that appoints the director as the agent for service of process by the principal. Vehicle Code section 11710(d) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the service of process can be

served upon the department's director. The form entitled Appointment of Director as Agent for Service of Process, ADM9050 (NEW 12/2004) is required for all bonds that require the service of process attachment.

§280.12. Lessor-Retailer Surety Bond Requirements.

Article 4.21 is proposed to establish regulations for dealers who are lessor-retailers. The remainder of the proposed regulations are still in development and will be adopted by the department at a later date.

Section 280.12 is proposed in Article 4.21, Lessor-Retailers. The section identifies the surety bond form by name, number and revision date and the bond conditions. The surety bond for lessor-retailers that deal exclusively with motorcycles is identified by section in Title 13. In addition, the section identifies the form required under Vehicle Code section 11710(d) and referenced in Vehicle Code section 11612(a) for the appointment of the director as an agent of service of process.

Subdivision (a) identifies the Lessor-Retailer Surety Bond, OL 25C (Rev. 11/2004), which is incorporated by reference. This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code sections 11612. The surety bond identifies the person or entity assuming the financial obligation for the period in which an occupational license is valid.

Subdivision (b) identifies the surety bond for lessor-retailers who deal exclusively with motorcycles. Vehicle Code section 11710(b) specifically identifies the dealer surety bond to be ten thousand dollars (\$10,000) when the dealer deals exclusively in motorcycles. Vehicle Code section 11612 establishes the same requirements for any lessor-retailer as for a dealer.

Subdivision (c) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond.

Subdivision (d) identifies the statutorily mandated supporting document that appoints the director as the agent for service of process by the principal. Vehicle Code section 11710(d) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the service of process can be served upon the department's director. The form entitled Appointment of Director as Agent for Service of Process, ADM9050 (NEW 12/2004) is required for all bonds that require the service of process attachment.

§285.06. Vehicle Remanufacturer Surety Bond Requirements.

Section 285.06 is proposed in Article 4.25, Vehicle Manufacturers. The section identifies the surety bond form by name, number and revision date and clarifies the bond conditions. In addition, the form required for the appointment of the director as an agent of service of process that is required in Vehicle Code section 11710 is identified.

Subdivision (a) identifies for the public the Remanufacturer Surety Bond, form OL 25A (Rev. 11/2004), which is incorporated by reference. This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code section 11710. The surety bond identifies the person or entity assuming the financial obligation for the period in which an occupational license is valid.

Subdivision (b) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond.

Subdivision (c) identifies the statutorily mandated supporting document that appoints the director as the agent for service of process by the principal. Vehicle Code section 11710(d) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the service of process can be served upon the department's director. The form entitled Appointment of Director as Agent for Service of Process, ADM9050 (NEW 12/2004) is required for all bonds that require the service of process attachment.

§292.06. Vehicle Verifier Surety Bond Requirements.

Section 292.06 is proposed in Article 4.23, Vehicle Verifiers. The section identifies the surety bond form by name, number and revision date and clarify the bond conditions.

Subdivision (a) identifies the Vehicle Verifier Surety Bond, form OL 26 (Rev. 11/2004), which is incorporated by reference. This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code section 11301. The surety bond identifies the person or entity that will assume the financial obligation for the period in which an occupational license is valid.

Subdivision (b) conditions the bond to include any loss for the public and the state based on any activity as a vehicle verifier. This condition is similar to that required in statute for other occupational licenses, such as Vehicle Code section 11711 for dealers or remanufacturers, Vehicle Code section 11612(b) for lessor-retailers, and Vehicle Code section 11202(a)(3) for traffic violator school owners.

Subdivision (c) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond.

§330.08. Registration Service Surety Bond Requirements.

Existing subdivision (a) identifies the bond form by name, number and revision date. Subdivision (a) is proposed to be amended to update the Registration Services Surety Bond, OL 605 (Rev. 9/2004), using the current revision date and incorporating the form by reference. Subdivisions (a)(1) through (a)(3) are proposed to be repealed because they are inconsistent with statute.

The provisions of subdivision (b) are proposed to be repealed because the existing language is inconsistent with Code of Civil Procedure section 995.320, which governs signatures required for surety bonds. New subdivision (b) is proposed which provides the department with all the names that an occupational license would use as a registration service. This is necessary to allow the department to identify the appropriate surety company should a claim be presented to the department.

New subdivision (c) is proposed to be added to identify the statutorily-mandated supporting document that appoints the director as the agent for service of process by the principal. The form ADM 9050 is identified by name, number and revision date and is incorporated by reference under these regulations. Vehicle Code section 11710(d) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the service of process can be served upon the department's director. The form entitled Appointment of Director as Agent for Service of Process, ADM 9050 (NEW 12/2004) will be required for all bonds that require the service of process attachment.

The upper portion of the form requires the occupational licensee/applicant/principal to state who is the principal and what type of occupational license the principal has applied for or currently holds. This is necessary to match the bond with this form and thus meet the mandatory requirement of Vehicle Code section 11710(d).

The middle portion of the form ADM 9050 requires the month, day and year that the principal signs the form and the signature of the principal. The principal's signature requires a witness or notary signature verifying that the principal signed. A witness or a notary, either of who may verify that the principal signed the form, would complete the lower portion of the form. The form follows the wording provided in Civil Code section 1189(a). Civil Code 1185 and Vehicle Code section 19 are the authority statutes governing who provides the identity of the person signing the form.

§340.13. Driving School Owner or All-Terrain Vehicle Safety Training Organization Principal Surety Bond Requirements.

Section 340.13 is proposed in Article 4.6, Title 13, California Code of Regulations to identify the surety bond form by name, number and revision date and clarify the bond conditions. In addition, the form required for the appointment of the director as an agent of service of process that is required in Vehicle Code section 11202(a)(6)(B) is identified.

Subdivision (a) identifies the Driving School Owner or All-Terrain Vehicle Safety Training Organization Principal Surety Bond, form OL 218 (Rev. 11/2004), which is incorporated by reference. This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code section 11102. The surety bond identifies the person or entity assuming the financial obligation for the period in which an occupational license is valid.

Subdivision (b) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond.

Subdivision (c) identifies the statutorily mandated supporting document that appoints the director as the agent for service of process by the principal. Vehicle Code section 11202(a)(6)(B) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the service of process can be served upon the department's director. The form entitled Appointment of Director as Agent for Service of Process, ADM9050 (NEW 12/2004) is required for all bonds that require the service of process attachment

§345.65. Traffic Violator School Owner Surety Bond Requirements.

Section 345.65 is proposed to be amended to repeal references to Vehicle Code sections with respect to procuring a bond or posting a deposit in lieu of a bond. The amendments provide consistent language for the department's various occupational license programs, and identify the bond form by name, number and revision date. In addition, the regulation identifies the form required for the appointment of the director as an agent of service of process under Vehicle Code section 11202(a)(6)(B).

Section 345.65(a) identifies the Traffic Violator School (TVS) Owner Surety Bond, OL 704 (Rev. 11/2004), which is incorporated by reference. This form is necessary to document that an admitted surety insurer properly issued a surety bond as required by Vehicle Code section 11202. The surety bond identifies the person or entity assuming the financial obligation for the period in which an occupational license is valid. The conditions in subdivision (a) limit the conditions set forth in statute (Vehicle Code section 11202(a)(3) and (6)(A) and (B)).

Subdivision (b) clarifies that the principal's name must include all "doing business as" (DBA) names used by the principal when conducting business as an occupational licensee. This is necessary to match the bond to any claim that may be filed against the bond. The remainder of existing subdivision (b) is proposed to be repealed as it duplicates the Code of Civil Procedure requirements for surety bonds and is therefore unnecessary. The signature and printed name of the principal is not required in the Code of Civil Procedure and is not necessary to authenticate this document.

Subdivision (c) identifies the statutorily mandated supporting document that appoints the director as the agent for service of process by the principal. Vehicle

Code section 11202(a)(6)(A) and (B) requires the applicant (principal) to agree that when personal service of process cannot be made in this state, then the process can be served upon the department's director. The form, Appointment of Director as Agent for Service of Process, ADM9050 (NEW 12/2004), is required for all bonds that require the service of process attachment. The remainder of subdivision (c) is proposed to be repealed as it repeats the bond cancellation process authorized in the Code of Civil Procedure and is therefore unnecessary.

Subdivision (d) is proposed to be repealed as it refers to the process repealed from Section 345.65(c) of these regulations.

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